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DEC - 6 2013

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

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6 **HAMID ASSADIAN**
7 Defendant
8 **PRO SE**

9
10
11 **UNITED STATES DISTRICT COURT**
12
13 **EASTERN DISTRICT OF CALIFORNIA**
14
15 **SACRAMENTO DIVISION**

16 **WORDTECH SYSTEMS, INC., a California**
17 **Corporation,**

18 **Plaintiff,**

19 **vs.**

20 **INTEGRATED NETWORK SOLUTIONS, Inc. a**
21 **Nevada corporation Corp. DBA INTEGRATED**
22 **NETWORK SOLUTIONS CORP. AKA**
23 **INTEGRATED NETWORK SOLUTIONS AKA**
24 **INTEGRATED SYSTEMS AKA INTERNET**
25 **NETWORK STORAGE COMPANY, AKA INSC;**
26 **NASSER KHATEMI, an individual, HAMID**
27 **ASSADIAN, an Individual, EHTERAM**
28 **GHODSIAN, an individual, SHOHREH JAVADI,**
an individual, MICHAEL F. ELLSWORTH, an
individual; BRIAN J. DEAN, an individual; SAN
JUAN UNIFIED SCHOOL DISTRICT; and
DOES 1 - 50,

Defendants

AND RELATED CROSS-ACTION

Case No.: 2:04-CV-01971 TLN EFB

DEFENDANT ASSADIAN'S NOTICE OF
MOTION AND MOTION TO REQUEST TO
DISMISS THE PENDING ACTION IN THE
EASTERN DISTRICT BASED UPON
IMPROPER VENUE PURSUANT TO
[FRCP 12(B)(3)] and [28 U.S.C. 1400(B)]

Hearing Date: January 16, 2014
Time: 2:00 P.M.
Courtroom: 2, 15th Floor
Judge: Hon. TROY L. NUNLEY

Defendant Hamid Assadian (Defendant Assadian) provides the following memorandum of points and authorities in support of his motion to request to dismiss the pending action based upon improper venue.

DEFENDANT Assadian's Motion to Request to dismiss the pending action based upon improper venue

Filed by fax

1 Alternatively, if this Honorable Court does not wish to grant a dismissal of the case due to
2 improper venue, Defendant Assadian requests this Honorable Court to transfer the case to the Central
3 District of California where all remaining defendants reside. Defendant Assadian does not waive his
4 rights as to the choice of venue by this special appearance and filing of this notice of a motion as well
5 as the motion to dismiss the pending action in the Eastern District based upon improper venue.
6

7 Defendant Assadian hereby incorporates all documents on the docket for this referenced case as
8 well as trial and session transcripts including but not limited to the Honorable Court's order dated
9 1/7/2005 (Doc. 21), Court's order dated 8/6/2012 (Doc. 448), and attached Declaration of Hamid
10 Assadian In Support Of His Motion to Dismiss the Case Based Upon The Venue, in order to avoid
11 repeated arguments and disclosures. Defendant Assadian hereby requests a Judicial Review of the
12 above documents and their corresponding transcripts, and all of their respective attachments.
13

14 Defendant Assadian hereby seeks forgiveness for any possible errors and/or omission on his
15 part for his Pro Se motion. Defendant Assadian has read what he has believed to be relevant Eastern
16 District Rules and Procedures and assures this Court of his full and unconditional intent to follow the
17 law and this Court's Rules and Procedures. As a Pro Se Defendant, Defendant Assadian relies on this
18 Hon. Court for law and research so that the principals of fairness and justice can be upheld.
19

20 Defendant Assadian, a mere employee of a company (Defendant INSC which is now bankrupt),
21 has suffered enough during the past nine years. Defendant Assadian has spent the past nine years of his
22 life dealing with this case and is completely and unconditionally exhausted. Defendant Assadian
23 sought an appeal to the US Court of Appeals so that he could move on with his life. Seeking justice
24 has turned out to be a life-long teaching lesson and an ordeal that he would never forget. Now in its
25 tenth year, and as soon as the "stay of proceeding" is terminated, Defendant Assadian requests from
26 this Honorable Court to force Plaintiff Wordtech to obey the law and pursue all defendants for the new
27
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1 trial that is ordered by the Honorable Court in the Central District of California where all defendants as
2 well as the majority of the witnesses reside. The people under the jurisdiction of the Eastern District
3 have done their part during the past nine years for Wordtech. Defendant Assadian believes that the
4 resources of the Eastern District should not be spent on the defendants who reside and have allegedly
5 committed illegal acts in the Central District of California. There is no relationship between the two
6 pending alleged charges of contributory infringement and inducement of infringement by all
7 defendants including Defendant Assadian and the Eastern District of California.
8

10 INTRODUCTION

11 Plaintiff Wordtech Systems, Inc. has filed a lawsuit against many defendants including
12 Defendant Assadian, a mere employee of the company, on September 22, 2004.
13

14 On January 7, 2005, the Honorable Court granted Defendants' motion to dismiss Plaintiff's
15 complaint (Doc. 21, Dated 1/7/2005, Defendant Assadian's Declaration Exhibit A). In its order, the
16 Hon. Court stated "**Indeed, when "the cause of action is personal to the individual defendant, the
17 venue requirement must be met as to that defendant."** Hoover, 84 f.3d at 1410." (Def. Assadian's
18 Declaration Exhibit A, Page 3, Lines 6-8).
19

20 In its latest motion for termination of stay in proceedings, Plaintiff Wordtech Systems, Inc. has
21 practically documented for the Honorable Court that this case does not belong in the Eastern District of
22 California. Plaintiff Wordtech has provided a Proof of Service for the Defendants including Defendant
23 Assadian (Def. Assadian's Declaration Exhibit C). All three Defendants in this NEW action reside in
24 Orange County and therefore under the jurisdiction of Central District of California and not the Eastern
25 District.
26
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1 Wordtech admits that all defendants for the new trial are individuals (Wordtech's Proof of
2 Service, Doc. 474 and Doc. 475, and Def. Assadian's Declaration Exhibit C).

3 Wordtech admits that all defendants are residents of Orange County, California, in the Central
4 District (Wordtech's Proof of Service, Doc. 474 and Doc. 475).

5 Defendant Integrated Network Solutions Corporation (Defendant INSC) has completed its
6 Chapter 7 bankruptcy as Plaintiff Wordtech has documented for this Hon. Court (Case no. 8:12-bk-
7 20268-ES).
8

9 Defendant Assadian believes that the Honorable Judge Morris England's statement and order,
10 Doc. 21, should control the venue now that only defendants who are individuals are involved in a
11 NEW trial in a NEW court. In Doc. 21, dated 1/7/2005, Page 3, Lines 6-8, the Hon. Judge England
12 stated:
13

14 "Indeed, when "the cause of action is personal to the individual defendant,
15 the venue requirement must be met as to that defendant." Hoover, 84 f.3d
16 at 1410."
17

18 ARGUMENT

19 Defendant Assadian presents the following memorandum of points and authorities with respect
20 to a dismissal of the case in the Eastern District based upon improper venue. Alternatively, Defendant
21 Assadian respectfully requests this Hon. Court to transfer the case to the Central District of California
22 where all defendants and the majority of the witness including but not limited to all past INSC
23 employees, officers and owners reside ((INSC has completed a Chapter 7 Bankruptcy proceedings in
24 the Central District of California).
25

26 Contrary to Plaintiff's Counsel Declaration, Defendant INSC's bankruptcy case is closed and a
27 discharge is not applicable. In her declaration (Doc. 474-2), Declaration of Marilyn A. Harper In
28

1 Support Of Motion For Termination Of Stay Proceedings, Page 1, Line 10, Wordtech's counsel
2 misleads the court by indicating "This case [8:12-bk-20268-ES] was closed on 04/04/2013 discharge
3 without". This case is closed and discharge is not applicable. Docket 7 of 8:12-bk-20268-ES case
4 reads:

5 "Bankruptcy Case Closed – NO DISCHARGE, **Not Applicable**. Since it
6 appears that no further matters are required that this case remain open, or
7 that the jurisdiction of this Court continue, it is ordered that the Trustee is
8 discharged, bond is exonerated, and the case is closed."
9

10
11 Furthermore, in its order dated 8/6/2012 (Doc. 448) the Hon. Court exonerated individuals
12 including Defendant Assadian's liability for direct infringement but set a new trial for individual
13 Defendants' liability for Contributory Infringement and for inducement of infringement. The Hon.
14 Court's order reads (Defendant Assadian's Declaration Exhibit B, Doc. 448, Court's Order dated
15 8/6/2012, Page 7, Lines 3-5) as follows:
16

17 "These issues will not be tried now, nor, as a consequence, will the issue of
18 the individual Defendants' liability for direct infringement."
19

20 Additionally,

21 In Doc. 448, Court's Order dated 8/6/2012, Page 9, Lines 15-18, it is stated:

22 "this case will be set for a new trial on the issues of the individual
23 Defendants' liability for contributory infringement and for inducement of
24 infringement"

25 VENUE STANDARD

26 In Court's order, Doc. 21, Page 2, the venue standard is well discussed. Defendant Assadian
27 hereby incorporates this Court Order, Document 21, where it references 28 U.S.C. 1400(b) and clearly
28 states:

1 "Any civil action for patent infringement may be brought in [1] the
2 judicial district where the defendant resides, or [2] where the defendant
3 has committed acts of the infringement and has a regular and established
4 place of business."

5 Defendant Assadian and the other defendants for the NEW trial all reside in the Central District
6 of California as Wordtech has admitted and documented for the Honorable Court. The only proper
7 venue for the pending and alleged charges against all defendants is therefore the Central District of
8 California.

9 Furthermore, Plaintiff's First Amended Complaint filed on January 28, 2005 does not plead any
10 facts regarding the residency of Defendant Assadian or any other remaining defendants. If Wordtech
11 was to bring a new action against Defendant Assadian and/or other remaining Defendants, it would
12 have been forced to do it in "a judicial district where any defendant resides if all of the defendants
13 reside in the same state" (28 U.S.C. 1391). This is a NEW trial and in a NEW court and therefore
14 Wordtech cannot claim a judicial economy either.
15

16 In this new trial, the alleged contributory infringement and inducement of infringement begin
17 and end in the Central District where all defendants reside. There is no relationship with the Eastern
18 District what-so-ever.
19

20 Alternatively, this Hon. Court is empowered to transfer the case to the Central District for the
21 convenience of the parties and witnesses "in the interest of justice" pursuant to 28 U.S.C. 1404 if this
22 Court determines that the Eastern District is the proper venue. Defendant Assadian believes that the
23 mere health and age condition of the owner of bankrupt INSC, Defendant Ghodsian, who should be
24 approaching eighty years, should be a major factor in this Court's decision to transfer the case as an
25 alternative. Defendant Assadian believes that Ms. Ghodsian would never be able to appear before the
26 Hon. Court in Sacramento. The Court has wide discretion to transfer a case under Section 1404. In this
27
28

1 Section, the Court need not even determine whether venue is proper in the first place (See E.P.G.
2 Pespsico, Inc. v. Board of Trustees, 1988 USD, Lexis 5322, 6-7 (S.D.N.Y. 1988) which states:

3 “The Court need not decide whether venue is properly placed in this
4 District since, even if it were decided that the [defendant] is doing
5 business in this District, this Court must find that venue should be
6 transferred to the [Western District] for the reasons given below.
Accordingly, the Court does not reach the [defendant's] motion for
transfer pursuant to 28 U.S.C. 1406 (a).”

7
8 Furthermore, Section 1404 factors for the Court's consideration for the “interest of justice” is
9 broad and as follows:

10 “(1) the convenience of the witnesses; (2) the location of relevant
11 documents and the relative use if access to sources of proof; (3) the
12 convenience of the parties; (4) the locus of operative facts; (5) the
13 availability of process of compel the attendance of unwilling witnesses;
14 (6) the relative means of the parties....”

15 Each and every element of Section 1404 [1404(1) through 1404(9)] leaves the door open for his
16 Hon. Court to transfer the case to the Central District if it decides not to dismiss the case in its entirety.

17 Plaintiff with its in-house Counsel, and two other senior attorneys and law firms are on one
18 hand and three PRO SE defendants are on the other. Defendant Khatemi is already in Chapter 7
19 bankruptcy and based on the ruling of the Hon. Bankruptcy Court in the Central District of California
20 and its appointed trustee, is insolvent. Defendant Ghodsian who has defaulted in the past is a lady
21 approaching eighty years of age with many health issues. Defendant Assadian is exhausted physically
22 with major heart conditions and financially dealing with this issue for the past nine years at exuberant
23 cost and resources. The clear weight for Section 1404 (6), “the relative means of the parties”, is
24 indisputably in favor of defendants including Defendant Assadian for this Hon. Court to elect the
25 Central District of California for the venue.
26
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1 Defendant Assadian believes that now that a new trial is ordered on selected issues and the case
2 is assigned to a new court and pursuant to FRCP 12(b)(3), as soon as the "stay of proceedings" are
3 terminated, the case should be dismissed in the Eastern District so that Wordtech can pursue the new
4 trial in the district where the defendants reside if Wordtech desire so. This is a new trial in a new
5 Court and as such Wordtech cannot claim judicial economy or being prejudiced.
6

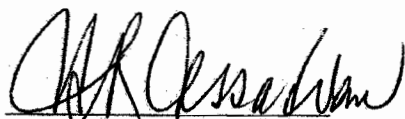
7 **SUMMARY AND CONCLUSION**

8 Defendant Assadian hereby respectfully requests from this Court to dismiss the entire action in
9 the Eastern District of California based on improper venue.
10

11 Alternatively, Defendant Assadian respectfully requests from this Court to transfer the above
12 reference case to the Central District of California where all defendants reside so that the principals of
13 fairness and justice can be upheld.
14

15 Date: December 5, 2013
16

17
18 Respectfully Submitted,
19

20
21 

22 Defendant
23 HAMID ASSADIAN
24 PRO SE
25
26
27
28

PROOF OF SERVICE BY MAIL

I, Jade Scarlett, declare that I am a resident of the State of California.

I am over the age of eighteen years and I am NOT a party to this matter.

My address is:

Ace Attorney Service
901 F Street, Suite 150
Sacramento, CA 95814

On December 6, 2013, I served the attached

**DEFENDANT ASSADIAN MOTION TO DISMISS DUE TO VENUE
DEFENDANT ASSADIAN'S DECLARATION IN SUPPORT OF MOTION TO DISMISS
DUE TO VENUE and ITS EXHIBIT A, B, AND C.**

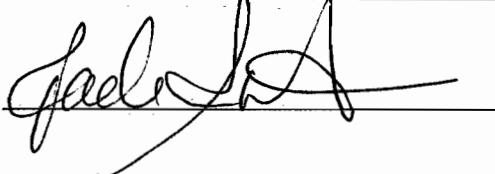
On the following person, by placing a true copy enclosed in a sealed envelope with first class postage fully prepaid in the United States Mail at Sacramento, California, addressed as follows:

Marilyn A. Harper
2500 Dean Leshner Drive, Suite A
Concord, CA 94520

Ehteram Ghodsian
24961 Via Portola
Laguna Niguel, CA 92677

Nasser Antonio Khatemi
24961 Via Portola
Laguna Niguel, CA 92677

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 6, 2013, in Sacramento, California.



POS - DEFENDANT Assadian's Motion to Request to dismiss the pending action based upon improper venue and Declaration of Def. Assadian in support of this motion and its exhibits.

1 Hamid Assadian
2 22 Nerval
3 Newport Beach, CA 92657
4 Ph. (949) 436-8494
5 Email: hrassadian@yahoo.com

6 HAMID ASSADIAN
7 Defendant
8 PRO SE

9 UNITED STATES DISTRICT COURT
10
11 EASTERN DISTRICT OF CALIFORNIA
12
13 SACRAMENTO DIVISION

14 WORDTECH SYSTEMS, INC., a California
15 Corporation,

16 Plaintiff,

17 vs.

18 INTEGRATED NETWORK SOLUTIONS, Inc. a
19 Nevada corporation Corp. DBA INTEGRATED
20 NETWORK SOLUTIONS CORP. AKA
21 INTEGRATED NETWORK SOLUTIONS AKA
22 INTEGRATED SYSTEMS AKA INTERNET
23 NETWORK STORAGE COMPANY, AKA INSC;
24 NASSER KHATEMI, an individual, HAMID
25 ASSADIAN, an Individual, EHTERAM
26 GHODSIAN, an individual, SHOHREH JAVADI,
27 an individual, MICHAEL F. ELLSWORTH, an
28 individual; BRIAN J. DEAN, an individual; SAN
JUAN UNIFIED SCHOOL DISTRICT; and
DOES 1 – 50,

Defendants

AND RELATED CROSS-ACTION

Case No.: 2:04-CV-01971 TLN EFB

**DECLARATION OF DEFENDANT
ASSADIAN IN SUPPORT OF HIS MOTION
TO DISMISS THE PENDING ACTION IN
THE EASTERN DISTRICT BASED UPON
IMPROPER VENUE**

Hearing Date: January 16, 2014
Time: 2:00 P.M.
Courtroom: 2, 15th Floor
Judge: Hon. TROY L. NUNLEY

DECLARATION OF DEFENDANT ASSADIAN IN SUPPORT OF HIS MOTION TO DISMISS THE PENDING ACTION IN
THE EASTERN DISTRICT BASED UPON IMPROPER VENUE

1 I, Hamid Assadian, declare as follows:

2 1. I am a defendant in this action. I make this declaration in support of my Motion to
3 Dismiss the Pending Action Due To Improper Venue.

4 2. I have lived in Orange County, California throughout my employment at Integrated
5 Network Solutions Corporation (INSC) starting from 1997.

6 3. I have lived in the County of Orange during the period that Plaintiff Wordtech alleges
7 that I have allegedly committed contributory infringement of its patents and induced infringement of
8 its patents while employed by INSC.

9 4. I have lived in Orange County California consistently from 1991 through present.

10 5. I have never lived or worked in any area within the Eastern District of California.


11 6. Attached Exhibit A is a true copy of the Court Order dated 1/7/2005.

12 7. Attached Exhibit B is a true copy of the Court Order dated 8/6/2012.

13 8. Attached Exhibit C is a true copy of Proof of Service that I have received from
14 Wordtech Systems reflecting that all defendants in the NEW action are residing in the County of
15 Orange, in the Central District of California.

16
17
18 Date: December 5, 2013

19
20 Respectfully Submitted,

21
22
23 
24 Defendant
25 HAMID ASSADIAN
26 PRO SE
27
28

DECLARATION OF DEFENDANT ASSADIAN IN SUPPORT OF HIS MOTION TO DISMISS THE PENDING ACTION IN
THE EASTERN DISTRICT BASED UPON IMPROPER VENUE

Court Order Dated 1/7/2005

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

WORDTECH SYSTEMS INC., a
California corporation,

Plaintiff,

v.

NO. CIV. S 04-1971 MCE PAN

MEMORANDUM AND ORDER

INTEGRATED NETWORK SOLUTIONS
CORP. DBA INTEGRATED NETWORK
AKA INTERNET NETWORK STORAGE
COMPANY, a Nevada corporation,
NASSER KHATEMI, an individual,
HAMID ASSADIAN, an individual,
and DOES 1-50,

Defendants.

-----oo0oo-----

Defendants Integrated Network Solutions Corp. ("INSC"),
Nasser Khatemi ("Khatemi"), and Hamid Assadian ("Assadian"), ask
this Court to dismiss the complaint filed by Plaintiff Wordtech
Systems Inc. ("Wordtech") based upon improper venue. For the
reasons discussed below, Defendants' motion is GRANTED.

//

1 **BACKGROUND**

2
3 Wordtech filed its complaint on September 22, 2004, in the
4 Eastern District of California. Wordtech alleges that Defendant
5 INSC (a Nevada corporation) and Defendants Khatemi and Assadian
6 (individual corporate employees residing in the Central District
7 of California) infringed two of its patents: U.S. Patent Nos.
8 1,141,298 and 1,532,198. On December 30, 2004, Defendants filed
9 a motion to dismiss for improper venue.

10
11 **STANDARD**

12
13 Venue in patent cases is governed by 28 U.S.C. § 1400(b),
14 which states:

15 Any civil action for patent infringement may be
16 brought in [1] the judicial district where the
17 defendant resides, or [2] where the defendant has
18 committed acts of infringement and has a regular
and established place of business.

19 28 U.S.C. § 1400(b). As to corporate defendants, the term
20 "resides" is defined by 28 U.S.C. § 1391(c), which states that
21 such a defendant resides in any district that it is subject to
22 personal jurisdiction. VE Holding Corp. v. Johnson Gas Appliance
23 Co., 917 F.2d 1574, 1580 (9th Cir. 1990); 28 U.S.C. § 1391(c).
24 Additionally, pursuant to 28 U.S.C. § 1391(d), an alien
25 corporation "may be sued in any district." VE Holding, 917 F.2d
26 at 1579.

27 Venue with regard to "corporate employees charged with
28 personal liability for acts taken as individuals, not as the

1 alter ego of the corporation, does not flow automatically to
2 forums in which venue is proper as to the corporation." Hoover
3 Group, Inc. v. Custom Metalcraft, Inc., 84 f.3d 1408, 1410 (Fed.
4 Cir. 1996); cf. Minnesota Mining & Mfg. Co. v. Eco. Chem, Inc.,
5 757 F.2d 1256, 1265 (Fed. Cir. 1985) (providing an example of a
6 corporate alter ego). Indeed, when "the cause of action is
7 personal to the individual defendant, the venue requirement must
8 be met as to that defendant." Hoover, 84 f.3d at 1410.

9 Finally, while a court may consider facts outside of the
10 pleadings when addressing a Federal Rule of Civil Procedure¹
11 12(b)(3) motion, it is not required to do so, and, in its
12 discretion, can require the parties to expressly plead all
13 necessary information. Murphy v. Schneider National, Inc., 362
14 F.3d 1133, 1137 (9th Cir. 2004); Hoover, 84 f.3d at 1410.

16 ANALYSIS

17
18 Venue is based on the facts alleged in a well-pled
19 complaint. Hoover, 84 F.3d at 1410; see Dody v. Brown, 659 F.
20 Supp. 541, 544 n.2 (W.D. Mo. 1987); McGhan v. F.C. Hayer Co., 84
21 F. Supp 540, 541 (D. Minn 1949) (holding that the plaintiff must
22 plead "ultimate facts that sufficiently allege venue so as to
23 sustain the Court's jurisdiction").

24 In its complaint, Wordtech only addressed venue generally.
25 (Pl's Compl. at 2:21-22; 4:16-20.) Notably, the complaint does
26 not allege any facts regarding Defendants' relationship to the

27
28 ¹ Unless otherwise stated, all further references to a
"Rule" or "Rules" are to the Federal Rules of Civil Procedure.

1 Eastern District of California. Consequently, the Court finds
2 that Wordtech's complaint is insufficient to find the Eastern
3 District as the proper venue in this case. Hoover, 84 f.3d at
4 1410; McGhan, 84 F.Supp at 541.

5 Accordingly, the Court has elected not to exercise its Rule
6 12(b)(3) discretion with respect to extra-pleading information.
7 As such, in order to sustain the Eastern District of California
8 as a proper venue, Wordtech must plead its basis for venue - as
9 to each defendant - specifically within its complaint.

10 To date, Wordtech has failed to do so. Consequently,
11 Defendant's motion is granted, and Plaintiff's complaint is
12 dismissed without prejudice. Plaintiff is granted leave to amend
13 its complaint and has 30 days from the date this order is filed
14 to file an amended complaint with the Court.

15
16 **CONCLUSION**

17
18 For the aforementioned reasons, Defendants' motion to
19 dismiss Plaintiff's complaint is GRANTED. Plaintiff's complaint
20 is dismissed without prejudice, and Plaintiff is granted leave to
21 amend as specified above.

22
23 IT IS SO ORDERED.

24 DATE: January 7, 2005

25 /S/ Morrison C. England, Jr.
26 MORRISON C. ENGLAND, JR.
27 UNITED STATES DISTRICT JUDGE
28

Court Order Dated 8/6/2012

-EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WORDTECH SYSTEMS, INC.,

Plaintiff,

v.

INTEGRATED NETWORK SOLUTIONS,
INC., et al.,

Defendants.

No. 2:04-cv-01971-MCE-EFB

ORDER

Plaintiff Wordtech Systems, Inc. ("Wordtech"), filed this patent infringement action on September 22, 2004. A jury in this Court found Defendants Integrated Network Solutions, Inc. ("INSC"), Nasser Khatemi and Hamid Assadian (collectively, "Defendants") each liable to Wordtech for direct infringement, contributory infringement and inducement of infringement involving technology for automated duplication of compact discs. Defendants filed a post-trial motion for new trial, which was denied. As is relevant here, the individual Defendants appealed the liability verdicts against them, and all Defendants appealed the jury's verdict as to damages.

1 The Federal Circuit reversed the denial of Defendants' new trial
2 motion and remanded to this Court. Presently before the Court is
3 supplemental briefing filed by both Wordtech and individual
4 Defendants, who are now proceeding pro se, regarding those issues
5 to be tried on remand. For the following reasons, trial will be
6 had on the issues of whether: 1) the individual Defendants are
7 liable for contributory infringement; 2) the individual
8 Defendants are liable for inducement of infringement; and
9 3) damages.

10
11 **BACKGROUND¹**
12

13 In its operative First Amended Complaint ("FAC"), Wordtech
14 alleges that Defendants infringed three of its patents, which
15 cover "Programmable Self-Operating Compact Disk Duplication
16 Systems," by modifying and selling "Robocopiers." Robocopiers
17 are disc duplication devices that copy video files from computers
18 to multiple discs. According to Wordtech, INSC, Khatemi and
19 Assadian, among others, directly and contributorily infringed
20 Wordtech's patents and induced third parties to do the same.

21 At trial, Wordtech attempted to elicit testimony going to
22 the validity of INSC as a corporation and to the issue of
23 piercing the corporate veil. Defendants objected to that
24 evidence as irrelevant, and the evidence was eventually excluded
25 on the basis that Wordtech's arguments were not encompassed
26 within the Court's Final Pretrial Order ("FPTO").

27
28 ¹The following facts are taken primarily from Wordtech Systems, Inc. v. INSC, 609 F.3d 1308 (Fed. Cir. 2010).

1 In addition, prior to closing arguments, Plaintiff moved to
2 amend its FAC to address "the identity of the corporation," and
3 that motion was denied. Finally, Defendants addressed Wordtech's
4 entity-related theories in their closing arguments, but the jury
5 was not instructed on these issues.

6 At the close of the trial, the jury found Defendants liable
7 on all infringement theories. The jury determined infringement
8 of each patent was willful and awarded Wordtech a total of
9 \$250,000 in damages. This Court subsequently found the case
10 "exceptional" under 35 U.S.C. § 285, trebled damages, and awarded
11 Wordtech attorneys' fees, interest and costs. Defendants
12 thereafter filed motions for judgment as a matter of law under
13 Rule 50 of the Federal Rules of Civil Procedure² and a motion for
14 new trial under Rule 59(a), all of which were denied.

15 On appeal, the individual Defendants challenged the
16 liability verdicts against them individually, and all Defendants
17 challenged the jury's damages award. That court remanded for
18 this Court to determine whether a new trial is warranted, stating
19 as follows:

20 [W]e reverse the denial of [Defendants'] Rule 59(a)
21 motion..., and remand for consideration of whether a
22 new trial is warranted on their individual liability
23 for direct infringement, inducement, and contributory
24 infringement. On remand, the district court should
25 address the issues of piercing INSC's corporate veil
and INSC's corporate status, whether Wordtech preserved
these arguments for trial, the law governing these
issues and whatever jury instructions might be
necessary.

26 ///

27
28 ²All further references to "Rule" or "Rules" are to the
Federal Rules of Civil Procedure unless otherwise noted.

1 Wordtech, 609 F.3d at 1317-18. The circuit court also raised
2 concerns as to whether a new trial should properly encompass
3 Wordtech's inducement theory given that, though the verdict form
4 made clear the parties intended to litigate the claim, the word
5 "inducement" does not appear in the FPTO and the theory was not
6 specifically argued by either side at trial nor was it included
7 among the jury instructions.

8 On remand, this Court ordered supplemental briefing as to
9 which of the issues identified by the Federal Circuit should be
10 re-litigated. That supplemental briefing is complete. Having
11 reviewed the parties' arguments, the record in this case, and the
12 applicable law, the Court now holds that a new trial is required
13 on the individual Defendants' liability for contributory
14 infringement and inducement and on damages.

15
16 **ANALYSIS**

17
18 **A. Direct Infringement.**

19
20 Pursuant to 35 U.S.C. § 271(a), "whoever without authority
21 makes, uses, offers to sell, or sells any patented invention,
22 within the United States or imports into the United States any
23 patented invention during the term of the patent therefor,
24 infringes the patent." "Title 35 authorizes a finding that an
25 officer of a corporation is personally liable for the
26 corporation's acts of infringement." Al-Site Corp. v. VSI
27 Intern., Inc., 174 F.3d 1308, 1331 (Fed. Cir. 1999).

28 ///

1 "Personal liability under § 271(a), however, requires sufficient
2 evidence to justify piercing the corporate veil." Id. In order
3 to maintain a claim for direct infringement against corporate
4 officers for a corporation's infringement, Plaintiff must
5 therefore plead and prove, for example, that the corporate entity
6 is a sham or that the corporate veil should be pierced to impose
7 liability on the individual Defendants. See, e.g., Timeline,
8 Inc. v. Proclarity Corp., 2006 WL 2038255, *3-4, n.1 (W.D. Wash.)
9 (dismissing direct infringement claims for failure to plead
10 grounds to justify piercing the corporate veil) (citing P.N.A.
11 Constr. Techs., Inc. v. McTech Group, Inc., 2006 WL 738721, *2
12 n.2 (N.D. Ga.); St. Paul Furniture Mfg. Co. v. Bergman,
13 935 F. Supp. 1180, 1186 n.6 (D. Kan. 1996)).

14 The issue of whether the individual Defendants can be held
15 liable under § 271(a) was not preserved for trial in this case
16 because not only did Plaintiff not plead that INSC is a sham
17 entity or that its corporate veil should be pierced for any
18 reason, but that issue was also not included in the Court's Final
19 Pretrial Order ("FPTO") as a disputed question. See FAC (ECF No.
20 22); ECF No. 157 (FPTO), 3:5-4:7. The Ninth Circuit has stated
21 that:

22 Pretrial orders play a crucial role in implementing the
23 purposes of the Federal Rules of Civil Procedure "to
24 secure the just, speedy, and inexpensive determination
25 of every action." Fed. R. Civ. P. 1. Unless pretrial
26 orders are honored and enforced, the objectives of the
27 pretrial conference to simplify issues and avoid
28 unnecessary proof by obtaining admissions of fact will
be jeopardized if not entirely nullified. Accordingly,
a party need offer no proof at trial as to matters
agreed to in the order, nor may a party offer evidence
or advance theories at the trial which are not included
in the order or which contradict its terms.

1 United States v. First Nat. Bank of Circle, 652 F.2d 882,
2 886 (9th Cir. 1981). Indeed, the Court in this case advised
3 the parties during the course of Plaintiff's case-in-chief
4 that issues not included within the FPTO would not be
5 litigated. See Trial Transcript (ECF No. 260), 30:24-37:14
6 (November 10, 2008). The Court further pointed out that the
7 FPTO can only be amended "to prevent manifest injustice."
8 Id. (referring to Fed. R. Civ. P. 16(e)). No basis for
9 finding manifest injustice was presented during trial to
10 justify modifying the FPTO to include issues pertaining to
11 corporate validity, nor is any plausible argument presented
12 now. Accordingly, the Court now finds that Plaintiff waived
13 its right to attempt to pierce the corporate veil or, as a
14 consequence, to hold the individual Defendants' liable for
15 direct infringement.

16 The Court is cognizant that Plaintiff in this case believes
17 the FPTO was amended by consent of the parties to conform to the
18 proof offered at trial. Defendants, however, objected to the
19 presentation of evidence going to corporate invalidity, Trial
20 Transcript (ECF No. 258), 141:11-24 (November 4, 2008), and, as
21 stated above, the Court clarified that issues not included in the
22 FPTO would not be litigated, Trial Transcript (ECF No. 260),
23 30:24-37:14 (November 10, 2008). In keeping with the Court's
24 ruling, the jury was not instructed on the corporate issues.

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1 In sum, then, Defendants did not litigate by consent the issues
2 of whether INSC was a sham entity or whether the corporate veil
3 should be pierced.³ These issues will not be tried now, nor, as
4 a consequence, will the issue of the individual Defendants'
5 liability for direct infringement.

6
7 **B. Contributory Infringement.**

8
9 According to the Federal Circuit, this Court's "legal error
10 in presenting the contributory infringement issue to the jury
11 requires a new trial." Wordtech, 609 F.3d at 1317. Accordingly,
12 the Court now finds that the issue of the individual Defendants'
13 personal liability for contributory infringement must be re-
14 tried.

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23 ³ The Court is also aware that Plaintiff takes issue with
24 the Court's statement that the individual Defendants were still
25 "on the line" despite the failure to include corporate validity
26 issues as triable questions within the FPTO. Trial Transcript
27 (ECF No. 60), 35:23-36:2 (November 10, 2008). The Court's
28 statement, however, is entirely consistent with its rejection of
Plaintiff's attempt to bring in the corporate issues at trial
because the individual Defendants were still individually "on the
line" for contributory infringement and for inducement without
regard to the validity of the corporate structure. See, e.g.,
Wordtech, 609 F.3d at 1316-17.


1 **C. Inducement of Infringement.**

2
3 Primarily based on the Federal Circuit's finding that
4 "Wordtech's counsel confirmed [that] inducement was not raised in
5 the Final Pretrial Order, in the jury instructions, or in the
6 closing arguments," the appellate court remanded to this Court to
7 determine whether a new trial should be had on the issue. Id. at
8 1316. The appellate court's assessment of the facts, however, is
9 not entirely accurate.

10 First, Wordtech's counsel did confirm that the word
11 "inducement" did not appear in the FPTO. Oral Arg. 27:42-28:16,
12 available at [http://oralarguments.cafc.uscourts.gov/mp3/2009-](http://oralarguments.cafc.uscourts.gov/mp3/2009-1454.mp3)
13 [1454.mp3](http://oralarguments.cafc.uscourts.gov/mp3/2009-1454.mp3). The Court finds, however, that, despite omission of
14 the word "inducement," this theory of liability was nonetheless
15 included within that Order. "A pretrial order...should be
16 liberally construed to permit any issues at trial that are
17 embraced within its language." Miller v. Safeco Title Ins. Co.,
18 758 F.2d 364 (9th Cir. 1985) (internal quotations and citations
19 omitted). In this case, the disputed factual issues incorporated
20 within the FPTO were taken verbatim from the parties' Joint
21 Pretrial Statement (ECF No. 154), which refers to all Defendants
22 collectively as "INSC," and states that the parties will litigate
23 whether "INSC has directly and contributorily infringed on the
24 Patents-In-Suit under 35 U.S.C. §271(a), (b), (c) and/or (f)."
25 Section 271(b) is the statutory section addressing inducement.
26 Accordingly, the individual Defendants' liability for inducement
27 was included within the FPTO.

28 ///

CONCLUSION


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE

Proof of Service by Wordtech

-EXHIBIT C

PROOF OF SERVICE

I Marilyn A. Harper hereby certify that on October 31, 2013, a true and correct copy of the foregoing:

NOTICE OF MOTION AND MOTION FOR TERMINATION OF STAY IN PROCEEDINGS

MEMORANDUM AND POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TERMINATION OF STAY IN PROCEEDINGS

DECLARATION OF MARILYN A. HARPER IN SUPPORT OF MOTION FOR TERMINATION OF STAY OF PROCEEDINGS

[PROPOSED] ORDER GRANTING MOTION FOR TERMINATION OF STAY OF PROCEEDINGS

was filed electronically with the Clerk of the Court using CM/ECF System. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

I further declare that I am over the age of eighteen and not a party to this action. My business address is 2500 Dean Leshar Dr., Suite A, which is located in Concord, California, where I served the above named documents by placing the above documents in a sealed envelope for deposit in the United States Postal Service, with first class postage fully prepaid, and that envelope was placed for collection and mailing on that date following ordinary business practices to the following persons addressed to:

HAMID ASSADIAN
22 Nerval
New Port Beach, CA 92657

NASSER KHATEMI
24961 Via Portola
Laguna Niguel, CA 92677

EHTERAM GHODSIAN
24961 Via Portola
Laguna Niguel, CA 92677

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on the 31st of October 2013 at Concord, California.


Marilyn A. Harper